

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

AUG 24 2004

In the Matter of

DOCKET) FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations
(Santa Ana, California)

) MB Docket No. 04-225
) RM-10965
)
)

To: The Secretary

REPLY COMMENTS

KVMD Licensee Co., LLC ("KVMD"), the permittee of Station KVMD-DT, Twentynine Palms, California (the "Station"), hereby replies to the Comments and Counterproposal ("Counterproposal") filed by Bela TV LLC ("Bela"), the permittee of Station KBEH-DT, Oxnard, California ("KBEH") in the above-referenced rulemaking. Trinity Christian Center of Santa Ana, Inc. ("Trinity"), the permittee of Station KTBN-DT, Santa Ana, California ("KTBN"), initiated this rulemaking by proposing to amend Section 73.622(b), Digital Television Table of Allotments ("DTV Table of Allotments"), to substitute DTV Channel 33 in place of DTV Channel 23c at Santa Ana, California and to amend accordingly the authorization for KTBN ("KTBN Proposal"). In its self-styled Counterproposal, Bela now urges the Commission to amend the DTV Table of Allotments to substitute Channel 23 for DTV Channel 24 and to amend accordingly the licensee for KBEH. Bela's Counterproposal is procedurally and substantively deficient, and most therefore be dismissed forthwith. In support thereof, KVMD states as follows.

No. of Copies rec'd 014
List ABCDE

First, procedural flaws bar any consideration of the substance of Bela's purported counterproposal. On the face of the *Notice of Proposed Rulemaking*, DA 04-1671, released June 18, 2004 ("*NPRM*"), for this proceeding, the Commission set August 8, 2004 as the deadline for Comments. As shown in the appended copy of Bela's Counterproposal (Exhibit 1), the pleading was received by the Commission's Mail Room on August 9, 2004, outside the due date for Comments established in the *NPRM*. As a late-filed pleading, Bela's Counterproposal does not merit consideration. *See Benjamin, Texas*, 19 FCC Rcd 470, 471 (2003) (affirming Media Bureau's dismissal of a late-filed counterproposal in a rulemaking proceeding). Moreover, the Counterproposal was not filed with the Office of the Secretary, as required by the Commission. *See NPRM*, Appendix at ¶ 4 ("All filings must addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554"); *Public Notice*, 18 FCC Rcd 16705 (2003) (reminding public that paper filings to be filed with Office of the Secretary). Bela failed to comply with this requirement, as demonstrated by the lack of a stamp or notation evidencing that the pleading was received by the Secretary. Given these blatant procedural deficiencies, Bela's Counterproposal should be dismissed outright by the Commission.

Second, while Bela labels its proposal a counterproposal, and submits it as such, Bela's proposal does not, in fact, qualify as a counterproposal under Commission policy. While styled as a counterproposal, the pleading fails to comply with a basic requirement for counterproposals: Bela's Counterproposal is not mutually exclusive with Trinity's KTBN Proposal, as the KTBN Proposal can be granted no matter how the Commission chooses to dispose of the Counterproposal. Absent mutual exclusivity with the petition seeking commencement of the rulemaking, a counterproposal is not properly a matter for consideration in an allotment

proceeding. *See Buffalo, New York*, 16 FCC Rcd 4013, 4016 (2000) (affirming Mass Media Bureau dismissal of counterproposal that was not mutually exclusive with original proposal).¹

Bela's Counterproposal is essentially a new proposal, inappropriately inserted into this proceeding as a counterproposal to Trinity's KTVB Proposal. As a new, independent proposal, Bela's Counterproposal violates Commission policy concerning the required mutually exclusive nature of counterproposals, and must be excluded from the instant rulemaking proceeding. Further, Bela's Counterproposal was filed subsequent to a Commission-imposed freeze on new proposals to change DTV channels within the DTV Table of Allotments. In an action taken on August 3, 2004, the Commission effectively declared a moratorium on proposals, such as Bela's, seeking to amend the DTV Table of Allotment to change DTV channels. *See Public Notice*, DA 04-2446, released August 3, 2004. Bela's Counterproposal must be seen for what it is – a blatant attempt to avoid this restriction – and dismissed accordingly.


Finally, assuming, *arguendo*, that the Commission accepts Bela's Counterproposal for consideration on the merits, the Counterproposal still must be rejected for its substantive infirmities. As the attached Engineering Statement (Exhibit 2) demonstrates, the analysis contained in the Technical Exhibit to Bela's Counterproposal turns upon faulty baseline populations for KVMD. As a result, Bela's claims of compliance with the Commission's DTV interference standards are unfounded. As KVMD's Engineering Statement demonstrates, Bela's Counterproposal will cause interference to KVMD-DT substantially beyond the 2%/10% *de minimis* threshold established by the Commission. Given this impermissible and extraordinary level of potential interference, the Counterproposal must be denied.

¹ Were there no mutual exclusivity requirement, Bela, or any party for that matter, could as well file for a change in the DTV Table of Allotments for New York, Florida, or Alaska in the instant proceeding. The mutual exclusivity requirement is the means by which such results are avoided.

WHEREFORE, KVMD Licensee Co., LLC respectfully requests that the Commission dismiss or otherwise deny the Comments and Counterproposal put forward by Bela TV LLC.

Respectfully submitted,

KVMD LICENSEE CO., LLC



Barry A. Friedman
Thompson Hine LLP
1920 N Street, NW
Washington, DC 20036
202-331-8800

Dated: August 24, 2004

EXHIBIT 1

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED & INSPECTED
AUG 9 2004
FCC - MAILROOM

In the Matter of)
)
Amendment of Section 73.622(b)) MB Docket No. 04-225
Table of Allotments,) RM-10695
Digital Television Broadcast Stations.)
(Santa Ana, California))

To: Chief, Video Division:

COMMENTS AND COUNTERPROPOSAL OF BELA TV LLC

Bela TV LLC ("Bela") asks that the Commission amend the DTV Table of Allotments to substitute DTV Channel 23 for DTV Channel 24 for Station KBEH-DT, Oxnard, California, with the following specifications:

<u>State and City</u>	<u>DTV Channel</u>	<u>DTV Power</u>	<u>Antenna HAAT</u>
Oxnard, CA	23	390 kW	537 m

As demonstrated in the attached engineering statement of duTreil Lundin & Rackley, Inc., the proposed allotment results in increased television service from Station KBEH-DT¹ in a manner consistent with all applicable technical standards. In this connection, Bela submits that the following facts demonstrate its proposal's substantial compliance with Rule 73.623(c)(2) with respect to Station KVMD-DT, Twentynine Palms, California: First, Bela's proposal for DTV Channel 23 causes no interference whatsoever to any of the areas and populations used to

¹ The proposed Channel 23 DTV allotment for KBEH-DT would provide interference-free service to an estimated population of 3,768,000. This represents an increase in service population of 2,538,000 (and 15,253 square kilometers) with respect to the KBEH-DT Channel 24-allotment facility; and 2,148,000 (and 12,511 square kilometers) with respect to the present KBEH Channel 63 analog facility.

No. of Copies rec'd 0+4
List ABCDE

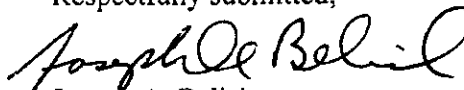
compute the KVMD-DT population values in Appendix B of Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, MM Docket No. 87-268, FCC 98-24, adopted January 29, 1998, (the "Reconsideration Order"). Next, KVMD-DT's currently authorized service area exceeds by 20,848 square kilometers and 2,440,401 people the service area used to compute the population values for KVMD set out in Appendix B of the Reconsideration Order. Finally, while Bela's proposed use of DTV Channel 23 does cause interference to KVMD-DT within the areas added to its service area after adoption of Appendix B of the Reconsideration Order (the "Gain Area"), this interference to the Gain Area affects only two percent of the Gain Area's population as determined in the 1990 US Census.²

In view of the foregoing, Bela requests that the DTV Table of Allotments be amended as follows:

<u>State and City</u>	<u>Present Channel</u>	<u>Proposed Channel</u>
Santa Ana, CA	23 c	33
Oxnard, CA	24	23

and that the authorization of Station KBEH-DT be modified to specify operation on DTV Channel 23.

Respectfully submitted,



Joseph A. Belisle
Counsel for Bela TV LLC

August 6, 2004
Leibowitz & Associates, P.A.
One SE Third Avenue - Suite 1450
Miami, FL 33131

² Bela notes that its engineer views these facts as demonstrating an anomalous situation warranting waiver of Rule 73.623(c)(2). While Bela believes Rule 73.623(c)(2) is fully accommodated on the facts stated, these same facts would certainly justify waiver of Rule 73.623(c)(2) if the rule would otherwise be applied to preclude grant of Bela's proposal. To the extent a waiver request assists in granting Bela's proposal, Bela requests waiver of Rule 73.623 (c) (2).

du Treil, Lundin & Rackley, Inc.

Consulting Engineers

TECHNICAL EXHIBIT
IN SUPPORT OF COMMENTS AND
COUNTERPROPOSAL
TELEVISION STATION KBEH-DT
OXNARD, CALIFORNIA

August 5, 2004

TECHNICAL EXHIBIT
IN SUPPORT OF COMMENTS AND COUNTERPROPOSAL
TELEVISION STATION KBEH-DT
OXNARD, CALIFORNIA

Table of Contents

Technical Statement

Figure 1

Technical Specifications

Figure 2

Predicted Coverage Contours

Figure 3

Summary of Domestic Allocation Analysis

TECHNICAL EXHIBIT
IN SUPPORT OF COMMENTS AND COUNTERPROPOSAL
TELEVISION STATION KBEH-DT
OXNARD, CALIFORNIA

Technical Statement

This Technical Statement was prepared on behalf of Bela TV LLC ("Bela"), licensee of television broadcast station KBEH(TV), Oxnard, California (Channel 63), in support of Comments and Counterproposal in MB Docket No. 04-225. In conjunction with the proposal to migrate DTV Channel 23 at Santa Ana to DTV Channel 23, Bela proposes to amend Section 73.622(b) of the FCC Rules to change the KBEH-DT transitional digital television channel from Channel 24 to Channel 23.

KBEH-DT was allotted DTV Channel 24 with a maximum effective radiated power (ERP) of 50 kW using a directional antenna and an antenna height above average terrain (HAAT) of 549 m.* KBEH-DT is authorized for operation on Channel 24 with a maximum directional ERP of 85 kW and antenna HAAT of 533 m.† The instant petition proposes Channel 23 in lieu of Channel 24 for KBEH-DT's DTV transitional channel using the same allotment reference location. The petitioner proposes that Channel 23 be allotted with a non-directional ERP of 390 kW and antenna HAAT of 553 m. The technical specifications for the proposed allotment are included herein at Figure 1.

* See Appendix B of *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, FCC-98-315, Released: December 18, 1998.

† See FCC File No. BPCDT-199901028AEN.

The proposed transmitting antenna will be located with a center of radiation at an elevation of 818 m above mean sea level and 553 m HAAT. Given a non-directional ERP of 390 kW, the proposed facility complies with Section 73.622(f)(8) concerning the maximum permissible ERP for UHF DTV stations located in Zone II.

As indicated in Figure 2, the proposed KBEH-DT allotment on Channel 23 will provide 48 dBu, f(50,90) contour coverage over the entire community of Oxnard, California in compliance with Section 73.625 of the FCC Rules.

The proposed Channel 23 facility meets the requirements of Section 73.623 of the FCC Rules concerning predicted interference to other existing U.S. NTSC facilities and U.S. DTV allotments and assignments. Longley-Rice interference analyses were conducted pursuant to the requirements of the FCC Rules; FCC OET Bulletin No. 69 ("OET-69")[†]; and published FCC guidelines for preparation of such interference analyses. The Longley-Rice interference analyses were conducted using the OET-69 software maintained by du Treil, Lundin & Rackley, Inc. based on the FCC published software routines.[§] Stations selected for analysis were determined pursuant to the distance requirements outlined in the FCC DTV Processing Guidelines Public Notice. Accordingly, co-channel DTV and NTSC stations within 429 km and 407 km, respectively, were examined for potential interference; and first-adjacent DTV and NTSC stations within 229 km and 207 km, respectively, were examined for potential interference. Analog taboo-related NTSC stations within 142 km were examined for potential interference. The results of the interference analyses for the proposed facility are summarized herein at Figure 3. As indicated therein, the proposed facility will meet the 2%/10% criterion outlined in the FCC Rules and published guidelines with respect to all considered stations with the exception of KVMD-DT.

[†] See *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, OET Bulletin 69, Federal Communications Commission (July 2, 1997)

[§] The duTreil, Lundin & Rackley, Inc. DTV interference analysis program is a precise implementation of the procedures outlined by the FCC in the Sixth Report and Order; subsequent Memorandum Opinion and Order; and FCC OET Bulletin No. 69. A nominal grid size resolution of 2 km was employed.

With respect to KVMD-DT, as noted in Figure 3, the Bela proposal will cause interference in excess of the 2.0%/10% de minimis criteria to the KVMD-DT construction permit facility (FCC File No. BPCDT-19991101AIP). However, this result is anomalous due to the unusual circumstances surrounding the KVMD-DT facility. The KVMD-DT facility was originally allotted DTV Channel 23 with a maximum ERP of 50 kW with an antenna HAAT of 90 m. The KVMD-DT facility was subsequently relocated 58 km west of its allotment location and its facility was maximized to a maximum ERP of 150 kW with an HAAT of 784 m (nearly maximum for a UHF DTV facility). Its predicted interference-free service population increased from 51,533 to 2,491,934, an increase of 4,836% (with a corresponding increase in service area from 2,525 square kilometers to 23,373 square kilometers). This represents an increase in service population of 2,440,401 in an area of 20,848. Despite this huge increase in service area, the KVMD-DT service baseline population would remain at 51,533 under normal FCC processing procedures.** This, in effect, causes the KVMD-DT to be treated essentially as a 10% station to which virtually no further interference may be caused. In the crowded spectrum of the Los Angeles market, this is clearly inequitable and an unintended consequence of the FCC processing procedures.

Considering the authorized KVMD-DT facility on Channel 23, the adjusted baseline should correctly be considered as 2,494,934. Under this approach, the Bela proposal meets the 2%/10% criteria with respect to the KVMD-DT construction permit facility.

It is noted that the DTV allotment for Santa Ana, California (KTBN-DT) on Channel 23 was ignored for the purposes of this analysis. By *Notice of Proposed Rule Making* in MB Docket No. 04-225, released on June 18, 2004, the FCC proposed

** The proposed KBEH-DT facility on Channel 23 causes 0 predicted interference to the original KVMD-DT service area. Furthermore, considering just the KVMD-DT net gain area alone, which contains a population of 2,440,401, the predicted interference (48,903) to KVMD-DT would be 2.0%, which would meet the FCC 2%/10% de minimis criteria.

that Channel 33 be substituted for Channel 23 at Santa Ana. Therefore, to correctly assess the allocation situation for the instant proposal, the Santa Ana allotment and construction permit facilities must be ignored. This includes situations related to possible masking interference caused by these two facilities to other stations in the interference analysis, including with respect to KVMD-DT, which is discussed above.

With respect to Class A TV station protection, the proposal has been evaluated according to the requirements of Section 73.623(c)(5) of the FCC Rules. The analysis reveals one potentially affected Class A TV station as follows:

- KSKP-CA, Oxnard, CA, Channel 25, BLTTA-20030507ACF.

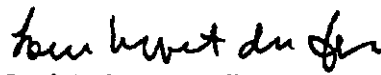
As demonstrated in Figure 3, the proposed KBEH-DT allotment facility will meet the 0.5% rounding requirement for calculation of predicted interference to KSKP-CA based on the OET-69 interference analysis.

The proposal is located 264 km from the closest point on the Mexican border and it is within the Mexican coordination distance. However, an allocation study reveals that the proposal would be fully-spaced with respect to all Mexican analog and digital television allotments. Since the proposed Oxnard allotment will be located 57 km further from the closest point on the Mexican border than the Santa Ana existing Channel 23 Allotment, which is located 207 km from the Mexican border, it is anticipated that there will be no impediment to approval of the proposed Channel 23 allotment at Oxnard.

A summary of the revised service area and population numbers as they would appear in the Appendix B of the FCC's *Sixth Report and Order* and subsequent *Second Memorandum Opinion and Order* are summarized below:

State and City	NTSC Channel	DTV Chan	DTV Power (kW)	Antenna HAAT (m)	DTV Service During Transition	
					Area (sq. km)	People (Thous)
CA OXNARD	63	23	390	553.0	26,168	3,768

As indicated above, the proposed Channel 23 DTV allotment for KBEH-DT would provide interference-free service to an estimated population of 3,768,000.^{††} This represents an increase in service population of 2,538,000 (and 15,253 square kilometers) with respect to the KBEH-DT Channel 24-allotment facility; and 2,148,000 (and 12,511 square kilometers) with respect to the present KBEH Channel 63 analog facility. It is evident from the above that the proposed Channel 23 allotment proposal would result in a preferential arrangement of FCC allotments.



Louis Robert du Treil, Jr.

du Treil, Lundin & Rackley, Inc.
201 Fletcher Ave.
Sarasota, FL 34237

August 5, 2004

^{††} All population figures herein are based on 1990 Census data consistent with FCC practice.

Figure 1

TECHNICAL EXHIBIT
IN SUPPORT OF COMMENTS AND COUNTERPROPOSAL
TELEVISION STATION KBEH-DT
OXNARD, CALIFORNIA

Technical Specifications

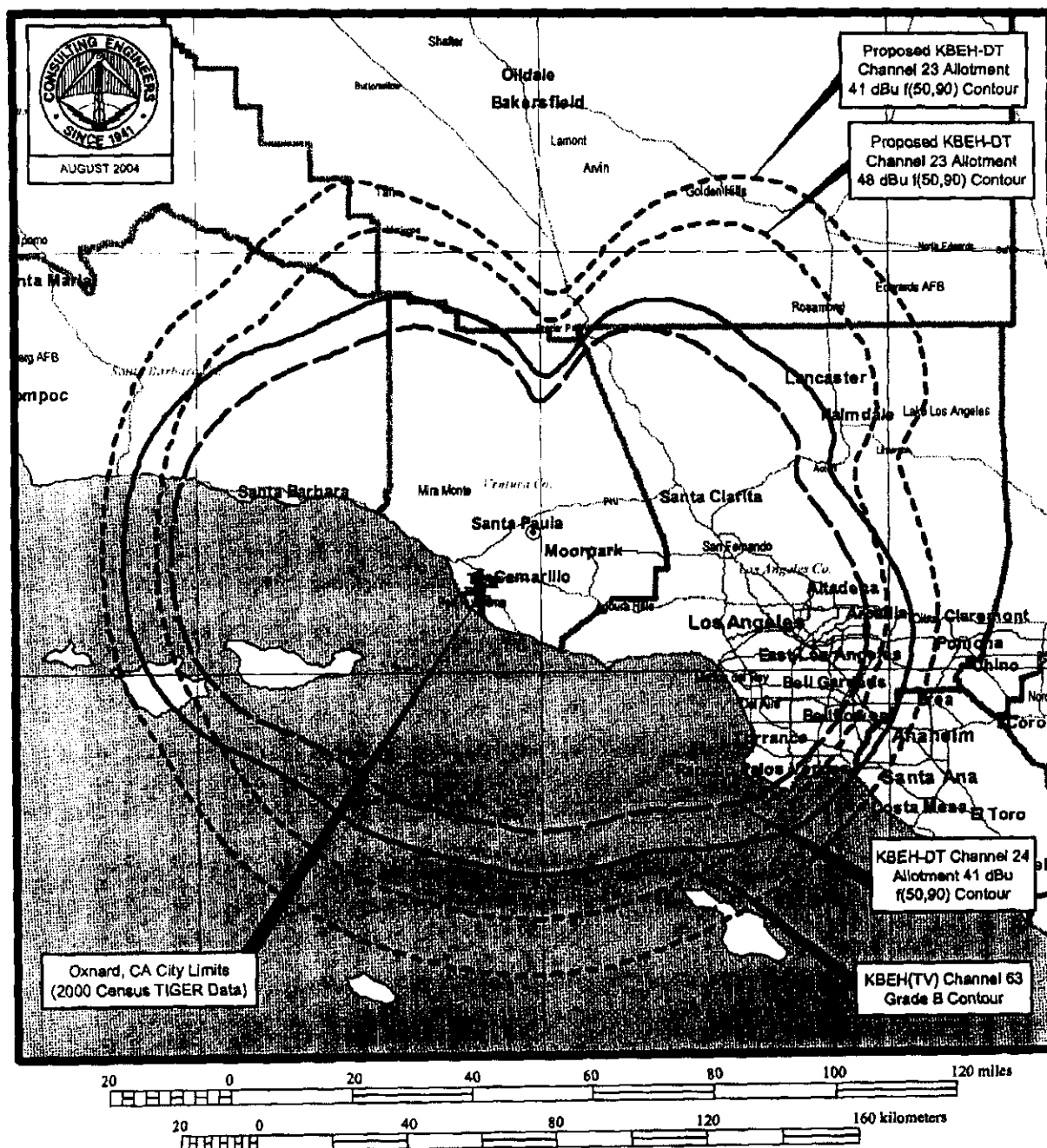
Channel / Frequency Band	23 / 524-530 MHz
Zone	II
Reference Coordinates (NAD 27):	
Latitude	34°19'49" North
Longitude	119°01'24" West
Height of Radiation Center Above Mean Sea Level	802 m
Height of Radiation Center Above Ground Level	98 m
Height of Radiation Center Above Average Terrain	537 m
Effective Radiated Power	390 kW

Directional Antenna Relative Field Values					
Degrees	Value	Degrees	Value	Degrees	Value
Non-directional antenna					

Notes concerning OET-69 analysis:

1. Channel 23 Allotment for Santa Ana will be migrated to Channel 33 (MB Docket No. 04-225).
2. Ignore DTV Allotment for Channel 23 at Santa Ana, CA, ARN No. DTVP0513.
3. Ignore DTV CP for Channel 23 at Santa Ana, CA, ARN No. 19991101AHZ.

Figure 2



PREDICTED COVERAGE CONTOURS

TELEVISION STATION KBEH-DT
OXNARD, CALIFORNIA

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

				SUPP	OF C ELE O	INIC AENT ON ST RD,	XHII ND C ON K FOR	TER -DT	POSA				
					Sum	of A	ion A	is					
					tions F	ally A	l by Pr	d Stati					
	y er	nnel	Call		y State		stance km)	Stat	Ap	on Prefix	lication Nu	Refer ber	
		9	12B-C	BF	FIEL		30.9	CP M		ITA	0020	18A	
		2	HY-T	LC	GELE		8.6	LIC		CT	1994	317K	
		3	RO-T	BF	FIEL		30.9	LIC		CT		3.5	
		3	KBSV		ES C		11.8	LIC		ET	1996	319K	
		3	MD-C	TWEN	NE P	CA	30.4	PLN		PLN	DTVI	0514	
		3	KVMD	TWEN	NE P	CA	15.8	CP		DT	9991	01AI	
		4	CR-T	SAN	NARDI	A	.65	LIC		ET	1983	021K	
		5	IET-L	LC	GELE		9.3	API		TA	0031	25AF	
		5	IET-L	LC	GELE		3.1	CP		TL	JG06	01JK	
		5	KP-C		ARD C		1.1	LIC		TA	0030	07AC	
		7	FX-L	BA	FIEL		30.9	CP		TL	0030	08AC	
		0	KPXN	SAN	NARDI	A	2.7	LIC		CT	1994	024K	
		0	KPXN	SAN	NARDI	A	9.3	API		CT	0010	31AB	
		1	BE-C	BA	FIEL		30.9	CP		TL	0010	16AH	
		1	BE-C	BA	FIEL		30.9	API		TA	0020	20AB	

Faci Nurr	P	ferenc ion B alysis	P	ferenc tion A alysis	y of In	ence	sis for	it-Cas	arios	P	sible F Baseli	t	Re:
1		--		--					0.00		--		pa
2		3754		0011	1	5551	6		0.04		2.0		pa
3		306		119		152			0.00		2.0		pa
4		--		--					0.00		--		pa
5		--		--					0.00		--		pa
6		4793		3657		33	48		.896		2.0		fa
7		--		--					0.00		--		pa
8		--		--					0.00		--		pa
9		--		--					0.00		--		pa
10		7		33		577			0.00		0.5		pa
11		--		--					0.00		--		pa
12		--		--					0.00		--		pa
13		--		--					0.00		--		pa
14		--		--					0.00		--		pa
15		--		--					0.00		--		pa
There	interi	e caus											
*Usin inimi.	corre ria w	aselin pect t	lation KVM	he KV facilit	DT fac s note	of 2,4 the pr	l, the l caus	interf nterfer	e pred to the	is 1.96 ID-DI	high p ment f	the 2. %/10	the 2. %/10

Figure 3

CERTIFICATE OF SERVICE

I, Janet C. Leventhal do hereby certify that a true and correct copy of the foregoing Comments and Counterproposal of Bela TV LLC sent by First Class Mail, Postage Prepaid was mailed this 6th day of August, 2004 to:

Colby M. May, Esquire
205 3rd Street SE
Washington, DC 20003

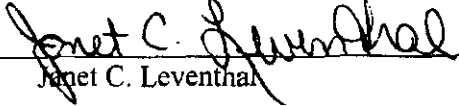
By: 
Janet C. Leventhal

EXHIBIT 2

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

**ENGINEERING STATEMENT
IN SUPPORT OF THE REPLY COMMENTS OF
KVMD LICENSEE CO., LLC
MEDIA BUREAU DOCKET NO. 04-225
STATION KVMD-DT
TWENTYNINE PALMS, CALIFORNIA**

This engineering statement was prepared on behalf of KVMD Licensee Co., LLC (KVMD), licensee of station KVMD-DT, Twentynine Palms, California, in support of its Reply Comments in Media Bureau Docket No. 04-225 addressing the comments and counterproposal of Bela TV LLC (Bela) in the above captioned docket. The Bela counterproposal requests the substitution of channel 23 for channel 24 at Oxnard, California, for use by Bela's station KBEH-DT. The proposed reference facilities for channel 23 at Oxnard are average effective radiated power (ERP) of 390 kilowatts (kW), nondirectional, and antenna radiation center height above average terrain (HAAT) of 537 meters.¹ The reference geographic coordinates for the channel 23 allotment specified in Bela's counterproposal are 34° 19' 49" North Latitude, 119° 01' 24" West Longitude.

¹ Bela's counterproposal is confusing with respect to the antenna radiation center HAAT requested. The legal statement specifies 537 meters, while the engineering statement specifies 553 meters. Later in Figure 1 of the Bela engineering exhibit, the antenna radiation center height is again specified as 537 meters.

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

Engineering Statement
KVMD Licensee Co., Inc.
MB Docket No. 04-225

Page 2

KVMD-DT is authorized (FCC File No. BPCDT-19991101AIP) to operate on channel 23 with maximum average ERP of 150 kW and antenna radiation center HAAT of 784 meters. The geographic coordinates for the authorized KVMD-DT transmitter site are 34° 02' 17" North Latitude, 116° 48' 47" West Longitude.

The Bela counterproposal should not be considered because, on its face, the proposal shows an increase in interference to KVMD-DT of 94.896%, well in excess of both the 10% and 2% *de minimis* limits established for evaluating DTV proposals like Bela's. This increase is calculated using the well-established FCC guidelines for determining interference.

Instead of using the KVMD-DT DTVSERVICE population from Appendix B of the FCC's *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268 (*Order*) as the baseline population, the Bela counterproposal is advanced on the basis of a modified DTVSERVICE population arising from the currently authorized KVMD-DT facilities. To this end, Bela requests a waiver of

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

Engineering Statement
KVMD Licensee Co., Inc.
MB Docket No. 04-225

Page 3

Section 73.623(c)(2) of the FCC's rules which establishes the familiar 10% and 2% interference increase limits.

The FCC provided a detailed explanation of the guidelines to be used for evaluating TV and DTV proposals in its Public Notice entitled, *Additional Application Processing Guidelines for Digital Television (DTV)*. In this document, the FCC states that it does not appear feasible to base the 10% or 2% limits on a DTVSERVICE population modified due to a change in facilities that allows a station to cover new area beyond that covered by the allotment facilities, "as this would require either extensive, accurate recordkeeping or extremely complicated and unwieldy calculations that may lead to disputes." The FCC goes on to state,

Attempting to alter the baseline to reflect such changes also appears to be an unnecessary complication. Therefore, both the DTVSERVICE and the NTSCSERVICE in Appendix B of the *Order* will continue to be used as the baseline for determining conformance with the 10% criteria, even if the authorized DTV or NTSC facilities have been modified subsequent to the adoption of the *Order*.

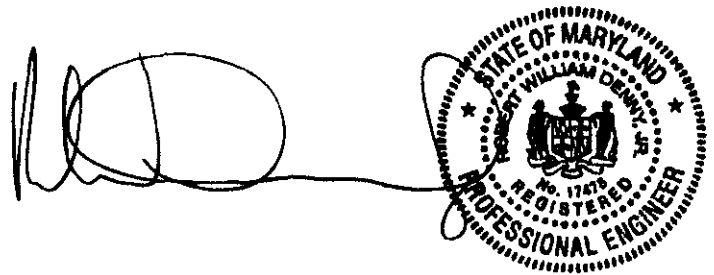
The FCC is clear that this baseline applies to interference calculations of the 2% limit as well.

DENNY & ASSOCIATES, P.C.
CONSULTING ENGINEERS
OXON HILL, MARYLAND

Engineering Statement
KVMD Licensee Co., Inc.
MB Docket No. 04-225

Page 4

The Bela counterproposal to substitute channel 23 for channel 24 at Oxnard for use by KBEH-DT should be rejected because the increased interference to KVMD-DT exceeds the limits set forth in Section 73.623 of the FCC rules. The FCC has clearly stated that baseline populations should be obtained from Appendix B of the *Order* and should not be recalculated due to a change in the station's service area resulting from a post-*Order* change in facilities.

A handwritten signature in black ink, appearing to read 'RD', is written over a circular professional engineer seal. The seal is for the State of Maryland and contains the text 'STATE OF MARYLAND', 'ROBERT W. DENNY, JR.', 'NO. 17478', 'REGISTERED', and 'PROFESSIONAL ENGINEER'. The seal also features a small crest in the center.

Robert W. Denny, Jr., P.E.

August 24, 2004

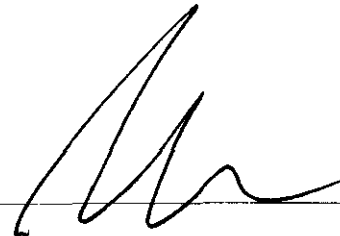
CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that a copy of the foregoing Reply Comments were served, on this 24th day of August, 2004, on the following parties by first-class mail, postage prepaid:

Colby M. May, Esq.
205 3rd Street, S.E.
Washington, D.C. 20003

Joseph A. Belisle, Esq.
Leibowitz & Associates, P.A.
Suite 1450
One SE Third Avenue
Miami, Florida 33131

Barbara A. Kreisman
Chief, Video Division
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

A handwritten signature in black ink, appearing to be "Barry A. Friedman", is written over a horizontal line.